Supreme Court, U. S.
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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1979

No. 79-873

Little Rock Newspapers, Inc. ..... *Petitioner*

v.

Louis Art Dodrill ..... *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
SUPREME COURT OF ARKANSAS

RESPONDENT'S BRIEF IN OPPOSITION

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Petitioner requests certiorari for the purpose of deciding that a professional who has lost his license to practice is a public figure and to correct supposed errors in the decision of the court below. Respondent respectfully requests that the Court deny the petition.

The statement of facts made by petitioner is not clear. Rather than restate the facts, which are clearly set out by the Arkansas Supreme Court at A-24 to 29 of the appendix, respondent would adopt the statement there.

REASONS FOR DENYING THE WRIT

1. Whether a disbarred attorney is a public figure for the limited range of issues surrounding his attempts to gain readmission to the bar?

The question as stated actually raises two somewhat interrelated points:

> (A) Is a professional a public figure if he or she has lost their license, attempts to regain it, and fails, and
> (B) Does the supposed public controversy over lawyers qualifications extend to the apparently unsuccessful efforts of a disbarred attorney to regain his license.

With respect to the issuance of the writ, these questions must be answered negatively.

(A) The first point, which can be squared with neither the facts of this case nor the broader policy issues it raises, must be answered negatively for two reasons: it would make all professionals public figures; and prior decisions of this Court mandate this result.

Petitioner's proposition, if adopted, would certainly make all lawyers, if not all profesisonals, public figures for the limited purpose of publicity concerning their unsuccessful attempts to regain their license after being disciplined. This is too much.

While the public may be entitled to know if a disciplined professional has regained his license, what possible public function is served by reports that the public need not fear the unsuccessful, except perhaps, humiliation.

Petitioner argues that the public at large needs reassurance "that it is protected against the unscrupulous and incompetent at the bar" [1] Petition at 7. Of course, a decision of this Court approving such reports would serve to make all similarly situated professionals subject to like publicity.

Respondent, like any disciplined professional seeking to regain his or her license, [2] if unsuccessful, represents no danger to the public, their competence or scruples of no consequence, since the danger lies in the very thing they have not attained—a professional license to practice before the public. [3]

If the public is to be protected, the obvious question is: Protected from what?

1.
This mantle of public service is a curious one for the teller of falsehoods to don.

2.
The petition at page 8 claims that there were news reports of respondent's lawsuit in the Supreme Court of Arkansas, which challenged the authority of the trial court to require him to take a bar examination. Not only is this claim outside the present record and irrelevant to his public figure status months later, the claim is, the evidence will show, false.

3.
Even if certiorari were granted to consider the narrow facts of this case, petitioner's contention could only be: *False* reports that a disbarred lawyer has been unsuccessful in regaining his license are entitled to constitutional protection under the First Amendment because the media feels the public should know it is protected from such persons.

Furthermore, prior decisions of this Court clearly indicate that respondent is not a public figure, not even for the limited issue of his apparently unsuccessful efforts to regain his license.

While petitioner conceeds at page 7 of the petition that not all lawyers are public figures, *Gertz v. Robert Welch*, 418 U.S. 323 (1974), it nevertheless urges the court to grant certiorari to consider that all disciplined non-lawyers are.

However, no decision of this court—certainly not *Gertz*—would indicate such a conclusion. Not even the discredited *Rosenbloom v. Metromedia*, 403 U.S. 29 (1971), would reach so far as to permit the publication of negative, [4] false reports, which bootstrap their object to public figure status.

In fact, if petitioner's reasoning were adopted, it would fully—if not more expansively—reinstate *Rosenbloom*, which the Court has recently refused to do, *Hutchsison v. Proxmire*, _____U.S._____, 99 S.Ct. 2675, 2688 (1979) and *Wolston v. Reader's Digest Ass'n., Inc.*, _____U.S. _____, 99 S.Ct. 2701, 2708 (1979).

Moreover, this Court's decision in *Time v. Firestone*, 424 U.S. 448 (1976) is dispositive of the type of false publicity here sought to be constitutionally protected.

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4. Negative in the sense that these reports were really non-news. Of course, even if they were newsworthy, respondent is not "automatically transformed into a public figure," *Wolston*, 99 S.Ct. at 2708.

Thus, the first report—suspended lawyers fails bar—was a false report of a private, non-public record, and not constitutionally protected under *Firestone*. The second, which was a report of a judicial proceeding, repeating the original libel and adding that respondent did not attend, is also not deserving or protection under the holding of *Firestone*, since the mere fact that a judicial proceeding was underway did not automatically create a public issue, not did it automatically make respondent a public figure.

(B) Petitioner next argues that there is a public controversy over the qualifications and discipline of lawyers, and that this controversy is so pervasive that it encompasses a disbarred lawyer's apparently unsuccessful attempt to regain his license.

With respect to the issuance of the writ, this effort must fail.

In the first place, even assuming that there is a public *concern* over the qualifications of lawyers and disciplinary actions taken against them, this concern does not equate in all instances with public controversy.

Whatever legitimate public interest may be served by public debate over the standards for admission to the bar, or for practicing attorneys, they dissipate when the interest turns to those particular individuals who cannot satisfy the former. In this instance, the public interest can at best be characterized as concern.

Mere concern does not equal controversy, as this Court has recognized in every case since *Gertz, supra.*

Even assuming that there is a public controversy over the qualifications of lawyers, it cannot be seriously said that this controversy reaches those who are not.

Furthermore, it is quite doubtful that the public's concern over lawyers, overrides the privacy rights of the individual, or society's (or a state's) own interest in keeping the examination process confidential.

Accordingly, the Arkansas State Board of Law Examiners has never revealed the names of those who sit for an examination. Thus, the Arkansas court stated:

> Application for and administration of the bar examination are not matters of public record. To preserve the integrity of the admission process these matters of necessity must be closely guarded and uncompromised by public dissemination. *Dodrill v. Little Rock Newspapers, Inc.*, 265 Ark. 628, n. 7 at A-33.

Thus, even assuming that there is a public controversy over the qualifications of lawyers, [5] it does not reach those who are not; and the material reported here cannot be said to be matter of controversy, since they are private according to state custom.

2. Whether the Arkansas court too narrowly, and unconstitutionally defined the concept of public figures?

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5. Respondent does not complain of any reports concerning the publicity surrounding his disbarment.

Here petitioner asks the Court to grant the writ to correct a supposed error on the part of the lower court. Because no such error exists, the writ should not issue.

Petitioner's argument is based on two misapprehensions of the lower court's decision.

First, petitioner asserts that the court *held* that the public must have a continuing interest a person before he or she could be deemed a public figure. The quotation relied upon for this assertion (A-31) is taken out of context, since upon examination it is clearly a comment on what other cases have held, not a holding itself.

Second is the claim that the lower court drew the definition of "public figure" too narrowly, and that this overly restrictive definition is unconstitutional. In fact, the court below did not attempt a definition of public figure, apart from quotations from decisions of this Court and illustrations from other state courts.

Such a definition was unnecessary in view of the court's finding that no controversy was one shown:

> The record in the case at bar is devoid of facts supporting the lower court's finding that Dodrill had attained "public figure" status. He had not thrust himself into the vortex of public controversy and, in fact, *any showing of public controversy was absent. Dodrill v. Little Rock Newspapers, Inc.*, 265 Ark. 628 (1979) (A-33 of petitioner's appendix, emphasis supplied).

Accordingly, since there was no controversy, there was no need for a definition of whether, or by what process

respondent, or any other professional, could become an involuntary public figure.

Therefore, the writ should not issue to consider the question of unconstitutionally narrow definitions, since no definition was attempted and would not have been germane.

CONCLUSION

Therefore, since there was no public controvesy, since respondent was not a public figure in any event, and because the petition does not raise any questions of importance or significance, the petition should be denied.

Respectfully submitted,

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